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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

JULIE BABAUTA SANTOS, et. al.,

Petitioners,

-v-

FELIX P. CAMACHO, etc., et. al.

Respondents.

CIVIL CASE NO. 04-00006

**DECLARATION OF RODNEY J.
JACOB IN SUPPORT OF REPLY IN
SUPPORT OF MOTION TO
DISQUALIFY ATTORNEY
GENERAL'S OFFICE**

FILED
DISTRICT COURT OF GUAM
MAR - 8 2005
MARY L.M. MORAN
CLERK OF COURT
174

ORIGINAL

1 I, RODNEY J. JACOB, declare that:

2 1. I am a partner with the law firm of Calvo & Clark, LLP, counsel of record
3 for Respondent Felix P. Camacho, Governor of Guam. I make this declaration on personal
4 knowledge, and if called to testify I could and would testify competently thereto.
5

6 2. Attached as Exhibit "A" is a true and correct copy of the Memorandum of
7 Points and Authorities of Defendants Government of Guam and Attorney General Douglas B.
8 Moylan in Support of Motion Under FRCP 12(b)(1) & (6) to Dismiss First Amended Complaint
9 for Lack of Subject Matter Jurisdiction and Failure of Plaintiff to State a Claim and to Strike
10 Defendant Attorney General Moylan as a Party Under FRCP 12(b)(6) & 21 & 26 U.S.C. §
11 7422(f)(1) & (2) for Failure of Plaintiff to State a Claim and Misjoinder stamped filed October
12 28, 2004.
13

14 I declare under penalty of perjury pursuant to the laws of the United States and of
15 the Territory of Guam that the foregoing declaration is true and correct.

16 Executed this 7th day of March, 2005, in Tamuning, Guam.
17

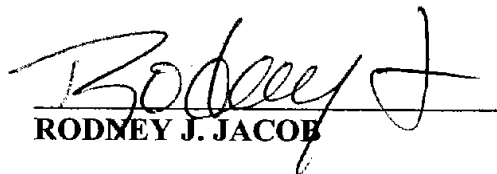
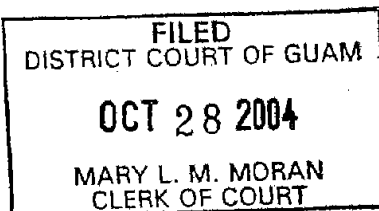
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19 **RODNEY J. JACOB**
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EXHIBIT A



Office of the Attorney General

Douglas B. Moylan

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Attorneys for Defendants Government of Guam and
Attorney General Douglas B. Moylan



**IN THE DISTRICT COURT OF GUAM
HAG ÅT ÑA, GUAM**

CHARMAINE R. TORRES, on behalf of
herself and a class of others similarly situated,

Plaintiff,

vs.

GOVERNMENT OF GUAM; FELIX P.
CAMACHO, Governor of Guam; ARTEMIO
B. ILAGAN, Director of the Guam
Department of Revenue and Taxation;
LOURDES M. PEREZ, Director of the Guam
Department of Administration; and
DOUGLAS B. MOYLAN, Attorney General
of Guam.

Defendants.

CIVIL CASE NO. CV04-00038

**MEMORANDUM OF POINTS AND
AUTHORITIES OF DEFENDANTS
GOVERNMENT OF GUAM AND
ATTORNEY GENERAL DOUGLAS B.
MOYLAN IN SUPPORT OF MOTION
UNDER FRCP 12(b)(1) & (6) TO DISMISS
FIRST AMENDED COMPLAINT FOR
LACK OF SUBJECT MATTER
JURISDICTION AND FAILURE OF
PLAINTIFF TO STATE A CLAIM AND
TO STRIKE DEFENDANT ATTORNEY
GENERAL MOYLAN AS A PARTY
UNDER FRCP 12(b)(6) & 21 & 26 U.S.C.
§7422(f)(1) & (2) FOR FAILURE OF
PLAINTIFF TO STATE A CLAIM AND
MISJOINDER**

Defendants Government of Guam and Attorney General Douglas B. Moylan submit this
Memorandum of Points and Authorities in support of their above entitled motion to dismiss and to
strike under FRCP 12(b)(1) & (6), FRCP Rule 21, and 26 U.S.C. 7422(f)(1) & (2).

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Memorandum of Points and Authorities in Defendants Government of Guam and
Attorney General Douglas B. Moylan in Support of Motion Under FRCP 12(b)(1) & (6)
To Dismiss First Amended Complaint for Lack of Subject Matter Jurisdiction
District Court Case No. CV04-00038

1 **A. THE MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT**
2 **UNDER FRCP 12(b)(1) & (6) FOR LACK OF SUBJECT MATTER**
3 **JURISDICTION OVER THIS ACTION AND FOR FAILURE OF PLAINTIFF TO**
4 **STATE ANY CLAIMS FOR RELIEF SHOULD BE GRANTED.**

5 Defendants Government of Guam and Attorney General Douglas B. Moylan refer to and
6 adopt in its entirety the Memorandum of Points and Authorities filed concurrently in this case by
7 the co-Defendant, Felix P. Camacho, Governor of Guam, in support of Governor Camacho's
8 motion under FRCP 12(b)(1) & (6) to dismiss this action. Based on the reasons set forth in the said
9 Memorandum of Points and Authorities, Plaintiff's First Amended Complaint should be dismissed
10 under FRCP 12(b)(1) & (6).¹

11 **B. ~~THE MOTION TO STRIKE DEFENDANT ATTORNEY GENERAL DOUGLAS B.~~**
12 **~~MOYLAN AS A PARTY DEFENDANT IN THIS CASE UNDER FRCP 12(b)(6)~~**
13 **~~AND FRCP 21 FOR FAILURE OF PLAINTIFF TO STATE A CLAIM AND FOR~~**
14 **~~MISJOINDER SHOULD BE GRANTED.~~**

15 Under the Organic Act of Guam and the U.S. Internal Revenue Code as mirrored in
16 Guam, an action to recover a refund of Guam territorial income tax is properly brought against
17 the government of Guam and not the Attorney General of Guam. 48 U.S.C. §1421i(a), (b), (d),
18 (e) & (h)(2), 26 U.S.C. §7422(f)(1) & (2). Because the earned income tax credit is treated as an
19 overpayment of income tax to be refunded to the taxpayer, it subject to the same rules under the
20 Organic Act of Guam and the Internal Revenue Code as ordinary income tax refunds. 48 U.S.C.
21 §1421i(h)(2), 26 U.S.C. §32 & §7422(f)(1) & (2), *Sorenson v. Secretary of Treasury*, 475 U.S.
22 851, 863, 106 S.Ct. 1600, 89 L.Ed. 2d 855 (1986); *Israel v. United States*, 356 F.3d 221 (2nd
23 Cir. 2004); *See* pages 4 & 5 of Governor Camacho's Memorandum of Points and Authorities.

24 ¹ The Attorney General's Office originally represented the Governor of Guam in this case but at his request, the
25 Governor has been permitted to retain outside counsel for this case.

1 For this reason alone, the Plaintiff has failed to state a claim for relief against Defendant
2 Attorney General Douglas B. Moylan and has misjoined him as a Defendant. Defendant
3 Attorney General Douglas B. Moylan should, therefore, be stricken as a party in this case. 26
4 U.S.C. §7422(f)(1) & (2), 48 U.S.C. §1421i(h)(2), & FRCP 21.

5 Moreover, the Attorney General of Guam has no jurisdiction over the administration and
6 enforcement of the Guam territorial income tax or the operations of the Guam Department of
7 Revenue and Taxation and the Guam Department of Administration, which are in charge of
8 certifying and paying income tax refunds. 48 U.S.C. §1421i(c), d(2), (e), h(2) & (3); 11 G.C.A.
9 §1102, §1103, §1103 & §1104; 5 G.C.A. §20106, §21101 *et seq.*, §21101 *et seq.*, 22101 *et*

10 *seq.*, §22201 *et seq.*, 22301 *et seq.*, §22401 *et seq.* & 30101 *et seq.* Although the Attorney
11 General of Guam is the chief legal officer of the government of Guam under the Organic Act of
12 Guam and the laws of Guam, it is this Court and not the Attorney General of Guam that will
13 determine the rights and obligations of Plaintiff and Defendant government of Guam in relation
14 to the earned income tax credit in Guam. 48 U.S.C. §1421g(d); 5 G.C.A. 30101 *et seq.* For this
15 additional reason, Plaintiff has failed to state any claim for relief against Defendant Attorney
16 General Douglas B. Moylan and has misjoined him as a defendant. Defendant Attorney
17 General Douglas B. Moylan should, therefore, be stricken as a party in this case. FRCP 21.

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19 Dated this 28th day of October, 2004.

20
21 OFFICE OF THE ATTORNEY GENERAL
Douglas B. Moylan, Attorney General

22
23 STEPHEN A. COHEN
Attorney for Defendants

24 Solicitor:\Cohen\Torres EITC Dismissal Brief X1\ba

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Memorandum of Points and Authorities in Defendants Government of Guam and
Attorney General Douglas B. Moylan in Support of Motion Under FRCP 12(b)(1) & (6)
To Dismiss First Amended Complaint for Lack of Subject Matter Jurisdiction
District Court Case No. CV04-00038